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Attorneys for Plaintiff
PUBLIC.RESOURCE.ORG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PUBLIC.RESOURCE.ORG,

Plaintiff,

v.

SHEET METAL AND AIR CONDITIONING
CONTRACTORS' NATIONAL
ASSOCIATION, INC.,

Defendant.

Case No.: 3:13-cv-00815 SC

**DECLARATION OF CORYNNE
MCSHERRY IN SUPPORT OF
PUBLIC.RESOURCE.ORG'S
REQUEST FOR CLERK'S ENTRY OF
DEFAULT**

1 I, Corynne McSherry, declare pursuant to 28 U.S.C. § 1746 as follows:

2 1. I am an attorney licensed to practice in California and before this Court. I am
3 Intellectual Property Director at the Electronic Frontier Foundation and counsel for Plaintiff
4 Public.Resource.Org (“Plaintiff”). I submit this declaration in support of Plaintiff’s Request for
5 Clerk’s Entry of Default with personal knowledge of the facts I state.

6 2. On March 1, 2013, I sent a Notice of a Lawsuit and Request to Waive Service of a
7 Summons (the “Notice”) to Jon L. Farnsworth of the law firm of Felhaber, Larson, Fenlon &
8 Vogt P.A., counsel for Defendant Sheet Metal and Air Conditioning Contractors’ National
9 Association, Inc. (Dkt. No. 11.)

10 3. Mr. Farnsworth returned to me a signed Waiver of the Service of Summons, dated
11 March 14, 2013 (the “Waiver”), which included the statement that “I also understand that I, or the
12 entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from
13 March 1, 2013, the date when this request was sent.” (Dkt. No. 11.)

14 4. On March 20, 2013, I filed with the Court copies of the following documents: (1)
15 the Waiver signed by Mr. Farnsworth; (2) the Notice I sent Mr. Farnsworth; (3) the notarized
16 Affidavit of Mailing for Mr. Farnsworth’s signed Waiver, dated March 14, 2013; and (4) the
17 Certificate of Service for my service on Mr. Farnsworth of the Clerk’s Notice Scheduling Case
18 Management Conference on Reassignment, the Order Reassigning Case to Judge Samuel Conti,
19 the Notice of Impending Reassignment to a United States District Court Judge and a printout of
20 Judge Conti’s court webpage, dated March 19, 2013. (Dkt. No. 11.)

21 5. Under Rule 12 of the Federal Rules of Civil Procedure, and as noted in the Waiver
22 signed by Mr. Farnsworth, Defendant was required to respond to Public.Resource.Org’s
23 Complaint for Declaratory and Injunctive Relief (the “Complaint”) within 60 days of March 1,
24 2013. Accordingly, Defendant’s deadline to respond to the Complaint was April 30, 2013. As of
25 May 6, 2013, Defendant has not responded to the Complaint.

26 6. On May 2, 2013, I emailed Mr. Farnsworth to inquire as to whether his client
27 intended to respond to the Complaint. On May 3, 2013, Mr. Farnsworth replied to my email and
28

1 advised me that "our client is not intending on filing a responsive pleading." A copy of this email
2 exchange is Exhibit 1 to this Declaration.


3 I declare under penalty of perjury that the foregoing is true and correct.

4 EXECUTED this 6th day of May, 2013.

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7 CORYNNE McSHERRY
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EXHIBIT 1

From: "Jon L. Farnsworth" <JFarnsworth@Felhaber.com> 
Subject: RE: PRO v. SMACNA [FELHABER-worksite.FID377165]
Date: May 3, 2013 11:17:28 AM PDT
To: Corynne McSherry <corynne@eff.org>

1 Attachment, 10 KB

Corynne,

I appreciate your email; however, our client is not intending on filing a responsive pleading.

Jon L. Farnsworth
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From: Corynne McSherry [mailto:corynne@eff.org]
Sent: Thursday, May 02, 2013 1:35 PM
To: Jon L. Farnsworth

Cc: Andrew Bridges; Kathleen Lu; James Varellas; David Halperin

Subject: PRO v. SMACNA

Dear Jon,

We were surprised that your client did not file a response to Public.Resource.Org's Complaint in the above matter on April 30 (the filing deadline noted in the docket.) We assumed there had been some logistical problem on your end, but note that there is still no response as of this morning.

Please let me know as soon as possible whether your client intends to respond and, if so, the reason for the delay. As you can imagine, my client is eager to resolve this matter promptly.

Please also meet my co-counsel for this matter, Andrew Bridges, Kathleen Lu, and James Varellas (of Fenwick & West, LLP), and David Halperin, all cc'd. I can remain your primary point of contact but if I am unavailable please feel free to reach out to them.

If your firm is no longer lead on this matter, please let me know.

Best regards,
Corynne

Corynne McSherry
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